THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.9143 of 2002

ORAL ORDER:

Petitioner, who is the owner of a house in Srinivasa Nagar Colony at Kamayya Thopu of Kanuru Gram Panchayat (fourth respondent), alleging that he is authorized by all the residents of the colony to file this petition, filed this petition questioning the resolution of the Gram Panchayat, Kanuru, and the consequential order of the Collector (first respondent), permitting constructions of police station in an area of Acs.0-12cents out of Acs.0-37 cents of site in R.S.No.247/2 of Kanuru, set apart for community purpose as per the sanctioned lay of No.37/1984 in which his house is situate, for purpose of construction of a police station therein, at the request of the Commissioner of Police, Vijayawada (second respondent). On various grounds second and fourth respondents filed counter affidavits contesting the petition, inter alia contending that in the fact situation decision to construct a police station in Acs.0-12cents of site in the colony in which petitioner is residing, needs no interference. Petitioner filed his reply affidavit.

2. The main contention of the learned counsel for petitioner is that since the Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority (third respondent) while sanctioning the lay out of the colony directed that an open space of Ac.0-37cents has to be set apart for public purpose, that site of Ac.0-37cents can only be used as a vacant land as lung space in the colony and no construction can be permitted in that vacant site. Relying on **BANGALORE MEDICAL TRUST v. B.S.MUDDAPPA**, **VIRENDER GAUR v. STATE OF HARYANA**, **CO-OPERATIVE HOUSING SOCIETY, SALEEMNAGAR LIMITED v. MCH**, **BHAGYANAGAR COLONY WELFARE ASSOCIATION v. GOVERNMENT OF A.P.** and **SRI SHIRDI SAI SAMAJ, HYDERABAD v. BHAGYANAGAR COLONY WELFARE ASSOCIATION** he contended that construction of a police station in the vacant site set apart for lung space would not only violate the conditions on which lay out was

sanctioned but would also amount to violation of dicta of the apex Court and this Court in the above cited decisions. Relying on Andhra Pradesh Gram Panchayat Land Development (Lay Out and Building) Rules, 2002 (the Rules), he contended that the proposed construction of police station in the vacant site set apart in the lay out would amount to violation of Rule 11(7) of the Rules, which reads as follows.

> "All the roads and open spaces such as parks and playgrounds earmarked in accordance with these rules in a layout, which is approved by the Gram Panchayat shall automatically stand transferred free of cost, and vest with the Gram Panchayat free from all encumbrances. After such vesting, the Gram Panchayat shall maintain all such open spaces for the purpose for which they have been earmarked."

and contended that since the proposed police station would eat away about 1/3rd of the lung space provided for in the lay out, petitioner may be granted the relief sought.

3. The contention of the learned standing counsel for fourth respondent that the Rules which came into force in 2002 can have no application to the lay outs sanctioned prior to coming into force of the Rules and since Andhra Pradesh Gram Panchayats Building Rules, 1972 (hereinafter referred to as 1972 Rules), were in force at the time of sanction of the lay out 1972 Rules only would apply to the facts of this case and since Rule 3(b) of the 1972 Rules enables the 5% of total area of the lay out, set apart as open space can be made use of as a playground, a park or for the construction of an educational institution or for any other public purpose by the Gram Panchayat, utilizing a part of the open space in the lay out of the colony in which the petitioner is residing for construction of a police station, which is for a public purpose, cannot be said to be violative of the 1972 Rules or even the Rules and contended that petitioner filed this petition only to create sensation and popularity.

4. Before considering the rival contentions, from the record it is seen that a learned Judge while admitting this petition granted stay of the proceedings impugned. When fourth respondent and first and third respondents filed two petitions to vacate the stay, a learned Judge allowed those petitions and vacated the interim stay granted earlier. Questioning those orders petitioner filed writ appeals. While disposing of those writ appeals, a Division Bench of this Court inter alia observed

> "After noticing the details the learned single Judge held that the decision of the Gram

> Panchayat in allotting 0-12 cents for construction of Police Station cannot be faulted with, since the same has been reserved for public purpose in the lay out. Construction of a Police Station undoubtedly is a public purpose."

Therefore, it is clear that construction of a police station is for public purpose.

5. As rightly contended by the learned standing counsel for fifth respondent since Rules were not in force at the time the lay out was sanctioned and since 1972 Rules only were in force at that time, the Rules cannot be applied to the above lay out in this case sanctioned as per 1972 Rules. As per the 1972 Rules at least 5 percent of the total area of land in a lay out which is to vest in the gram panchayat for a playground, a park, an educational institution or for any other public purpose, by the gram panchayat. In view thereof fourth respondent, Gram Panchayat, alienating part of the land in the lay out, which vested in it, to the police department for construction of a police station cannot be said to be against to 1972 Rules.

6. Now, coming to the decisions relied on by the learned counsel for the petitioner. **BANGALORE MEDICAL TRUST** case (1 supra), **CO-OPERATIVE HOUSING SOCIETY, SALEEMNAGAR LIMITED** case (3 supra), **BHAGYANAGAR COLONY WELFARE ASSOCIATION** case (4 supra) and **SRI SHIRDI SAI SAMAJ, HYDERABAD** case (5 supra) relate to construction in areas earmarked for parks in the concerned lay outs in Urban areas. In this case, the area in the lay out is not specifically set apart for a park, as contemplated by 1972 Rules, as per which such vacant land can also be used for any public purpose by the gram panchayat, which is not so in the case of places set apart for parks in Urban areas. So, the said decisions do not apply to the facts of this case. The ratio in **VIRENDER GAUR** case (2 supra) is that government can have no right, interest or title in a land vested in a Municipality and so it has no power to deal with such land. The said decision has no application to the facts of this case.

7. For the above reasons, I find no merits in this petition and hence, the petition is dismissed. No costs.

(C.Y.Somayajulu, J.)

Date: 11-07-2005

Cvrk